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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1025

PAUL HENRY PARKER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDICES TO PETITION

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APPENDICES

	Page
Appendix A	A-1 - A-5
Opinion of the Court of Appeals below	
Appendix B	B-1 - B-5
Statutes and Constitutional Provision	
Appendix C	C-1 - C-14
Pertinent statements and testimony of witnesses given in regard to the Indictments	
Appendix D	D-1 - D-2
Pertinent portions of the Government's closing argument in Petitioner's first trial	

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INDEX TO APPENDICES

APPENDIX A

The Opinion of the Fifth Circuit Court of Appeals in
United States v. Parker.

APPENDIX B

Pertinent statutory and constitutional provisions.

APPENDIX C

Statements of persons made to agents and in testimony
before the Grand Jury and Trial Jury during the investiga-
tion and trial of Petitioner under the first Indictment.

APPENDIX D

Pertinent portions of the closing argument given by the
prosecutor to the jury during Petitioner's trial under the
first Indictment.

APPENDIX A

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PAUL HENRY PARKER,
Defendant-Appellant.

Nos. 78-1269, 78-1270
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Oct. 26, 1978.

Defendant appealed from an order of the United States District Court for the Middle District of Florida, John A. Reed, Jr., J., denying his motion to dismiss an indictment. The Court of Appeals, Ainsworth, Circuit Judge, held that: (1) the indictment, which charged a wide-ranging conspiracy affirmatively and unlawfully to interfere with the processes of justice, did not place defendant in double jeopardy; (2) the fact that evidence of the offenses charged in the indictment was admitted at an earlier trial of defendant on the charge that he participated in a distinct bombing conspiracy did not, by itself, implicate the double jeopardy clause, and (3) the collateral estoppel doctrine was inapposite.

Affirmed.

1. Indictment and Information 1023(8)

Denial of motion to dismiss indictment on double jeopardy grounds is an appealable "collateral order."

See publication Words and Phrases for other judicial constructions and definitions.

2. Criminal Law 202(1)

Indictment of defendant for a wide-ranging conspiracy affirmatively and unlawfully to interfere with the processes of justice did not place him in double jeopardy where, although defendant had previously been convicted of participation in a

*Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

conspiracy to induce bombing and there was some overlap in the time during which the alleged conspiracies existed and in the participants in the conspiracies, different overt acts were charged and the underlying objectives of the conspiracies were distinct. 18 U.S.C.A. §§ 371, 842(a)(3)(A), 844(i), 1503, 1510, 1622; 26 U.S.C.A. (I.R.C.1954) § 5861; Labor-Management Reporting and Disclosure Act of 1959, §§ 209(b, c), 501(c), 29 U.S.C.A. §§ 439(b, c), 501(c).

3. Criminal Law 202(1)

Fact that evidence of offenses underlying indictment charging a conspiracy to interfere with the processes of justice had been admitted at prior trial of defendant on charge of conspiring to induce bombing did not, by itself, implicate the double jeopardy clause where the offenses charged in the later indictment for obstruction of justice were not charged in the earlier indictment.

4. Judgment 751

Where none of the factual issues involved in indictment charging defendant and a codefendant with a wide-ranging conspiracy affirmatively and unlawfully to interfere with the processes of justice was necessarily found for defendant at prior trial on charge that he induced others to maliciously damage a building by explosives and to unlawfully possess destructive devices and that he conspired to violate the statute pertaining to the unlawful transportation of explosives, the collateral estoppel doctrine was inapposite to prevent trial of defendant on obstruction of justice charges. 18 U.S.C.A. §§ 371, 842(a)(3)(A), 844(i); 26 U.S.C.A. (I.R.C.1954) § 5861.

Appeals from the United States District Court for the Middle District of Florida.

Before GOLDBERG, AINSWORTH and HILL, Circuit Judges.

AINSWORTH, Circuit Judge:

[1] Defendant Paul Henry Parker appeals from the district court's denial of his motion to dismiss the indictment (hereinafter described) on the grounds that trial thereof would place him in double jeopardy and that the Government is collaterally estopped from prosecuting him on the offenses charged in the

indictment. We agree with the district court, and therefore affirm the denial of the motion to dismiss the indictment.¹

Parker was president of a Teamsters Local involved in an organizational struggle that he was marred by a series of bombing incidents in 1971. He was charged and convicted of unlawful involvement in these bombings. The specific counts were: (1) inducing others to maliciously damage a building by explosive (18 U.S.C. § 844(i)); (2) inducing others to unlawfully possess destructive devices (26 U.S.C. § 5861); (3) conspiring (18 U.S.C. § 371) to violate 18 U.S.C. § 844(i), 26 U.S.C. § 5861 and 18 U.S.C. § 842(a)(3)(A) (unlawful transportation of explosives).

Count One of the current indictment charges Parker and a codefendant, Thomas A. Larkin, with a conspiracy (18 U.S.C. § 371). The Government alleges that this conspiracy has five objectives: obstruction of criminal investigations (18 U.S.C. § 1510), obstruction of justice (18 U.S.C. § 1503), subornation of perjury (18 U.S.C. § 1622), embezzlement of union funds (29 U.S.C. § 501(c)) and the falsification of union records (29 U.S.C. § 439(b) & (c)). The remaining twelve counts charge specific acts of embezzlement and falsification of union records and reports. The conspiracy was charged to have begun in February 1971 and to have continued until the date of the indictment, October 27, 1977. This is contrasted with the conspiracy in the first indictment, which began on February 25, 1971, and ended by April 16, 1971, according to the indictment. Parker and two other defendants, Wingate and Burch, were the indictees in the first indictment, whereas Parker and Larkin were the indicted coconspirators in the second.

Defendant contends that the current indictment places him in double jeopardy. The Government asserts, on the other hand, that the offenses charged in this indictment all concern unlawful efforts to conceal criminal responsibility for the bombings rather than the offenses concerning the bombings themselves, and therefore that no double jeopardy problem is involved.

1. A denial of the motion to dismiss on double jeopardy grounds is an appealable "collateral order" under *Abney v. United States*, 431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977). See *United States v. Smith*, 5 Cir. 1978, 574 F.2d 308, 309.

Defendant relies on *United States v. Inmon*, 3 Cir., 1977, 568 F.2d 326 and *United States v. Mallah*, 2 Cir., 1974, 503 F.2d 971, 985-87, cert. denied, 420 U.S. 995, 95 S.Ct. 1425, 43 L.Ed.2d 671 (1975), in contending that his double jeopardy claim should prevail. The *Inmon* court adopted the Second Circuit's rule in *Mallah*, and held that "when a defendant makes a nonfrivolous showing that an indictment charges the same offense as that for which he was formerly placed in jeopardy, the burden of establishing separate [conspiracies]... is on the government." 568 F.2d at 331-32. However, the district court in this case explicitly found that defendant had not made such a "non-frivolous showing." Without adopting or approving this burden-shifting rule,² we conclude that the district court was correct in rejecting defendant's double jeopardy claim.

The traditional test for determining whether prosecution on a second charge violates the double jeopardy clause was formulated by the Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). "The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." 284 U.S. at 304, 52 S.Ct. at 182. Recent Supreme Court decisions have reaffirmed the vitality of this test. See *Brown v. Ohio*, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977); *Jeffers v. United States*, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1977); *Ianelli v. United States*, 420 U.S. 770, 785 n. 17, 95 S.Ct. 1284, 1294, 43 L.Ed.2d 616 (1975). This Circuit has interpreted this "different evidence" test to mandate only that the second charged offense require

2. The traditional rule in this Circuit is that the defendant has the burden of proving double jeopardy. See *Rothaus v. United States*, 5 Cir., 1963, 319 F.2d 528, 529; *Reid v. United States*, 5 Cir., 1949, 177 F.2d 743, 745. But see *United States v. Inmon*, 3 Cir., 1977, 568 F.2d 326, 331 (distinguishing *Reid* mainly on the grounds that there was a full evidentiary record of the first trial, the placement of the burden of persuasion was not of critical importance, and that *Reid* was decided before *Abney v. United States*, 431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) made it clear that a pretrial evidentiary hearing was appropriate. There is, of course, a full evidentiary record of the first trial in this case. *Rothaus* was distinguished as involving the defendant's burden of demonstrating an abuse of discretion in the district court's declaration of a mistrial in defendant's first trial.)

proof of a fact and an element that the first charged offense does not. *United States v. Horsley*, 5 Cir., 1975, 519 F.2d 1264, 1265; *United States v. Hill*, 5 Cir., 1974, 500 F.2d 733, 740.

[2] It is apparent that the "different evidence" standard is amply satisfied in the present case. The defendant was charged with involvement in two separate and distinct conspiracies; the first concerned the inducement of bombing, while the second involves the obstruction of justice. Although there is some overlap in the time the conspiracies are charged to have existed, and in the participants in these conspiracies, the overlap is not significant for double jeopardy purposes. Different overt acts are charged, and the underlying objectives are distinct. The second indictment charged a wide-ranging scheme affirmatively and unlawfully to interfere with the processes of justice, rather than a simple continuation of the bombings conspiracy.³

[3, 4] The fact that evidence of the offenses charged in the current indictment was admitted at the earlier trial does not, by itself, implicate the double jeopardy clause, as those offenses were not charged in the first indictment. See *Sanchez v. United States*, 9 Cir., 1965, 341 F.2d 225, 227, cert. denied, 382 U.S. 856, 86 S.Ct. 109, 15 L.Ed.2d 94 (1965) (where evidence of the marijuana transaction currently charged had been admitted in a previous trial to rebut a defense of entrapment). The collateral estoppel doctrine of *Ashe v. Swenson*, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970) is inapposite here, since none of the factual issues involved in the second indictment was necessarily found for the defendant in the first trial, as defendant was convicted on all counts. See *Hardwick v. Doolittle*, 5 Cir., 1977, 558 F.2d 292, 298, cert. denied, 434 U.S. 1049, 98 S.Ct. 897, 54 L.Ed.2d 801 (1978).

AFFIRMED.

3. Since the defendant was charged with participation in two distinct conspiracies, rather than in a single conspiracy with several illegal ends, the result reached here is not affected by the rule of *Braverman v. United States*, 317 U.S. 49, 63 S.Ct. 99, 87 L.Ed. 23 (1942).

APPENDIX B

18 U.S.C.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C.

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 842(a)(3)(A).

(3) other than a licensee or permittee knowingly—

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

18 U.S.C. 844(i)

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten

years or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than \$20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

18 U.S.C.

§ 1502. Resistance to extradition agent

Whoever knowingly and willfully obstructs, resists, or opposes an extradition agent of the United States in the execution of his duties, shall be fined not more than \$300 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 769.

18 U.S.C.

§ 1503. Influencing or injuring officer, juror or witness generally

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 769.

18 U.S.C.

§ 1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator; or

Whoever injures any person in his person or property on account of the giving by such person or by any other person of any such information to any criminal investigator—

Shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) As used in this section, the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.

18 U.S.C.

§ 1622. Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than \$2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 774.

26 U.S.C.

§ 5855. Unlawful transportation in interstate commerce

It shall be unlawful for any person who is required to register as provided in section 5841 and who shall not have so registered, or any other person who has not in his possession a stamp-affixed order as provided in section 5814 or a stamp-affixed declaration as provided in section 5821, to ship, carry, or deliver any firearm in interstate commerce.

26 U.S.C.

§ 5861. Penalties

Any person who violates or fails to comply with any of the requirements of this chapter shall, upon conviction, be fined

not more than \$2,000, or be imprisoned for not more than 5 years, or both, in the discretion of the court. Aug. 16, 1954, c. 736, 68A Stat. 729.

29 U.S.C.

§ 438. Rules and regulations; simplified reports

The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this subchapter and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome, but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.

29 U.S.C.

§ 439. Violations and penalties

(a) Any person who willfully violates this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(c) Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(d) Each individual required to sign reports under sections 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

29 U.S.C.

§ 501. Embezzlement of assets; penalty

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX C

The following are relevant portions of the statement given by Curtis Leroy Love to the agents:

Agent: Did Witt ever . . . you, if and when you got arrested or busted or anything . . . some of this stuff he wanted you to do? That, uh, they'd take care of your family?

(Inaudible response)

Agent: What did he say along that line?

Love: Paul Parker told me.

Agent: Do you recall what . . .

Love: No, I don't. But if we got in any trouble concerning the picket line and stuff like this, that they would — in other words, I guess he meant if we got in a tight or anything with some of them on the, driving the trucks, that they would get us out of jail, not to worry about it.

And Witt told me that if I got caught or got in any trouble over this bombing, not to worry about it, that he could get me out, and I'd be on the street.

And if I ever had to go to the penitentiary for anything, that my family would be taken care of while I was down there.

Agent: Said who was going to take care of 'em?

Love: He just said that they would be taken care of. I wouldn't have to worry about being — so I took the man at his word.

While testifying before the Federal Grand Jury that returned the first Indictment against Appellant (76-72), Charles W. Bullard testified to the following:

A. Yes, sir, at one point he told me there would be no less than \$10,000 in it for me.

Q. \$10,000 for you alone?

A. Yes, sir.

Q. What did he mean by that? Or what did he say to indicate that the Union would be behind you 100%?

A. Well, I told him about that dynamite. I said that's some pretty combustible stuff, supposing we get caught with the dynamite, that a charge within itself.

He said, "Don't worry about it, they will never shut the door on you."

Q. Did he indicate what the Union was going to do for you, or what assistance the Union was to render to you to keep the door from being shut on you?

A. Yes, sir. He said they had something set up with the Bonding outfit and that they would never shut the door on us.

* * *

A. He said we would be furnished with the best lawyers and we would be out on bond, and in the event he said, which he had never known it to happen, but in the event we did have to stay in jail our families would be taken care of.

They would draw a Destitute Fund and we would too while we were in jail.

Q. To your knowledge, none of this could come about without Paul Parker's approval, is that right?

A. That's right.

Q. As far as legal fees being paid and bonds being paid out of Union funds?

A. That is correct.

* * *

A. I believe, now if I am not mistaken, Johnny and I both got I believe either fifty or one hundred dollars apiece at that time.

* * *

Q. And in order to get that money—. Well, how was that handled? How did you get your money from Herman?

A. We had to sign something. I believe they called it a Destitute Fund slip, and then he would take it there to the Union cashier, which was Marie, I only knew her as Marie, and she would give him the money and he would give it to us.

Q. Was that called the Destitute Fund or the Hardship Fund?

A. One or the other. I am not sure.

Q. What was the purpose for your receiving that money?

A. What was the purpose?

Q. Right.

A. Why did they give me the money?

* * *

Q. Right.

A. For our part in blowing up the dredge.

Q. For your part in blowing up the dredge?

A. Yes, sir.

Q. In other words it wasn't for any hardship you were experiencing.

A. No, sir.

Q. Is that correct?

A. That is correct.

Q. How did you work this? I mean, did you submit a voucher there? Did you submit or did you sign anything, anything else, or did you submit any sort of receipt to the Union?

A. No more than just the paper Herman had me to sign. To the best of my knowledge.

* * *

Q. And it was what, \$50 each?

A. It was either \$50 or \$100, I am not sure which it was.
* * *

Q. At this point in time, while Local 385 was on strike and you were a member of Local 385, what was your source of income?

A. What was my source of income?

Q. Right. Where was your money coming from?

A. Well, he was giving us a little along until we could get the money that he had promised me.

* * *

A. ... on the phone from North Carolina and he told me Bud Love and Alto Oglesby had been arrested, but that Charley Sharp had went down and signed their bonds, and the bonds were something like \$100,000 on each one of them, and that Charley had went down and signed their bonds. They were out on bonds.

* * *

Q. I don't know if you told us earlier, but why did you come back down to Orlando?

A. To get my money.

* * *

Q. When you say "to get your money," what money are you talking about?

A. The money Mr. Witt had promised me to start with.

Q. That was the money for what?

A. For the bombings and everything.

* * *

Q. That was a poor question, let me ask it this way. Did anyone connected with Local 385 in any way pay you any sum of money after Mr. Witt gave you the \$18 in the motel room?

A. Not until after I was arrested, and then there was some paid, but not directly to me.

Q. When you say "none was paid directly to you," are you saying you were the ultimate recipient of some money, is that correct?

A. Right.

Q. Tell us who paid the money and how did it eventually end up in your hands?

A. Well, Mr. Parker gave my wife some. I don't know how much he gave her. You know, I don't recall.

Q. That is Paul Parker?

A. Yes, sir.

Q. He gave your wife some money?

A. Yes. She went to the office with a message I had give her about the \$125 a week that she was supposed to get in the event I got in jail, and I believe she told me he only gave her the \$75 at that time, and then I think he gave her \$100 or maybe \$200 at another time.

* * *

Q. But, at a previous point in time you had been promised \$125 a week for her?

A. That is what my wife would get in the event I went to jail.

Q. Are you saying in the event you went to jail. Did you people set down and discuss this at some point in time, saying, "Well, this is what is going to happen if I go to jail?"

A. Well, to start with Mr. Witt told me that they wouldn't ever shut the door on me.

Q. That's right, but apparently you must have said, "What happens if the door shuts on me?"

A. Yeah, I did, and he said, "Well, very seldom anything like that would ever happen. That would be very unusual," or something to that effect but he says, "If you did, you won't have to worry about spending money and your wife won't have to worry about living ex-

penses until you are back out again. Everything will be taken care of," and I said, "To what extent?" He said, "Well, like Bud Love's wife was getting \$115 or \$125 a week right now." That was before Bud started talking through to the Agents about what happened, but she never got nothing like that."

* * *

In fact, he gave her some hard words to start with, and then gave her the money.

JUROR: What was the hard words?

THE WITNESS: Like he didn't owe nobody nothing, but he give her the money.

* * *

Q. Did anyone else ever tell you, throughout this whole period, to stonewall it, so to speak? To keep your mouth shut?

A. Yes, sir.

Q. Who?

A. In the beginning Herman.

Q. Herman told you that?

A. Yes, sir. This was before Herman went to jail himself.

* * *

Q. Is it your testimony you yourself did not pay any money for legal fees?

A. No, sir, I did not pay one nickel for legal fees.

Q. And again I think I asked you this earlier, but I want to clarify it myself. Did anyone at all indicate to you that someone was paying these attorneys in your behalf?

A. Yes, sir.

Q. All right, who indicated that to you?

A. Herman told me I wouldn't have to worry. He said, like I told you in the beginning, you will get the best that can be got.

Q. So it was your understanding that Local 385 was going to pay for your representation?

A. Sir, it was my understanding that the Union was behind me 100%, from the beginning to the end.

* * *

A. Right. He was the Business Agent with the Union.

Q. When Herman Witt spoke to you, it was like speaking with 395?

A. That is the impression he gave me, and that is the way I took it.

Q. But again these attorneys' fees couldn't have been paid without Paul Parker's approval, isn't that correct?

A. To the best of my knowledge Herman Witt didn't have that kind of money, no, sir.

Q. Well, what I am saying is, if they did come out of Union Funds, they could not be paid without Paul Parker's approval.

A. That is correct, as far as I know, yes, sir. I would think that would be correct, yes, sir.

* * *

Q. Just to wrap this up then, essentially you have told us you had been represented by one, two — well, you have had several attorneys representing you down through this period of time, and you haven't paid any of them any legal fees out of your own pocket, is that correct?

A. That is correct.

Q. That is a correct statement?

A. That's right.

* * *

Q. Did you ever ask the attorneys who was paying them?

A. No, ma'am, I didn't. Ma'am, I just assumed that the Union was paying it, you know, because as I said in the beginning, they told me I would be well taken care of, and attorneys of the caliber of Norman Abood and this Ralph Sistrunk and Lou Ferris and people like that, they don't come very cheap.

Testifying as a prosecution witness in the case of *U.S.A. V. Paul Henry Parker, 76-62-Orl-Cr-Y*, Herman F. Witt stated the following on direct examination:

Q. What did you get from Mr. Parker for doing these, making these bonds and getting these bombs, these sites blown up?

A. Nothing but a bunch of promises.

Q. What were you promised?

A. Many things.

Q. Can you name some of the things that you were promised.

* * *

Q. What are some of the items that you were promised?

A. Money, representation if anything happened.

Q. Anything else?

A. These things were promised at different times and in different ways. What it amounted to me was money and representation, representation and whatnot in case anything happened.

On cross-examination, Witt testified as to the following: Strike lines 7-17):

Q. Did you actually mechanically help plant a bomb at Overland or anything of that nature?

A. You mean to be ignited?

Q. Yes.

A. No, sir.

Q. Well, you just talked to Mr. Love and that was the end of your participation; is that right?

A. Mr. Love agreed that he could and would do it for \$200, was my understanding.

Q. And when it was done, did you pay Mr. Love for having done it?

* * *

A. He said that their expenses were such that he didn't have enough money with him to purchase the dynamite and have money to get back to Orlando.

Q. Did he specify a certain amount that he wanted?

A. Yes, sir.

Q. What was that?

A. Fifty Dollars.

Q. And did you send it or have it sent?

A. I guess you could say I had it sent.

On re-direct examination by the government, Witt testified as to the following:

Q. Now, at that time when you denied any knowledge, was that true?

A. Yes, sir.

Q. Did you have any knowledge of those bombings on April the 13th?

A. Yes, sir.

Q. You had knowledge of it?

A. Yes, sir.

Q. So then your testimony at that time was false?

A. Yes, sir.

Q. Excuse me, I don't understand. Was your testimony false? Your testimony was false?

A. It was false.

Q. Had you talked to anyone prior to giving your testimony about giving false testimony at that deposition?

* * *

Q. Sir, did you talk with anyone prior to giving that false testimony at that deposition about what you were going to say?

A. Yes, sir.

Q. Who?

A. Mr. Parker and I believe — well, I know there were other people. I don't remember their names, but there were other people.

* * *

Q. The conversation between you and Mr. Parker, what was said at that time?

* * *

A. That I should deny any knowledge, anything about it.

Q. This is after Parker had asked you to do these things.

* * *

Q. Were you ever promised — did anyone ever not associated with the Government ever promise to get you out of prison?

* * *

Q. Did anybody ever make any kind of statement of that nature to you?

A. Promises?

Q. To get you out, not connected with the Government?

A. Yes, sir.

Q. Do you recall who?

A. Mr. Parker.

Q. And when?

A. Many times.

* * *

Q. Was it after you were taken into custody?

A. Yes, sir.

* * *

(statement of the prosecutor)

MR. HORWITZ: The testimony has revealed that this man for a long period of time continually denied any knowledge of participation in the bombings. It is the Government's position that during this time he was being advised by Mr. Parker that he would be — that the Teamsters would take steps to get him out of jail.

* * *

Q. What did Mr. Parker say to you about getting you out of prison?

A. Mr. Parker said that I would have the best of, best attorneys that could be gotten and that — things relating to that, that I would be bonded and represented by the best attorneys that could be gotten.

Q. Did he ever say he would get you out in 30 days?

A. Yes, sir.

Prior to his being called as a government's witness, in Case 76-62-Orl-Cr-Y, Herman F. Witt had appeared before the Grand Jury on November 4, 1975, and testified as follows:

A. I was standing right in front of Mr. Parker's desk.

Q. Now, did he give you the envelope right there at this time?

A. In this very instance he put the money in the envelope and gave me the envelope to take.

Q. You saw him put money in it in front of you?

A. I don't remember seeing him put the money in it, sir. I don't remember seeing him put the money in the envelope.

* * *

Q. Okay, we will just move ahead a little bit. While you and Paul Parker were discussing and engaging in a planning of the bombings, you know, when you were getting ready to rain the dynamite down—

A. Yes, sir.

Q. You were working for the Union at that time were you not?

A. I was.

Q. And Paul Parker was too?

A. Yes, sir.

Q. And you were both collecting salaries from the Union at that time?

* * *

A. Yes, sir. I know I was and I am sure he was.

Q. And I believe in February, the latter part of February and the early part of March 1971, you testified you went down to Miami to pick up dynamite, is that correct?

A. Yes, sir.

Q. And at that time how did you pay for the expenses for the travel down to Miami and back?

A. The expenses were paid out of my pocket, but I had a receipt for the Turnpike, the Turnpike receipt. You get

a receipt when you pay coming off the Turnpike. And, as I stated this morning, I think I paid for the food that was consumed for breakfast. I would turn in that receipt and receive my money back also.

Q. Were there any lodging expenses involved?

A. No, sir. I left early that morning and drove to Miami.

Q. The travel, the gasoline?

A. That is on Credit Card.

Q. And whatever food expense you had when you were down there?

A. Yes, sir. I don't recall fueling, but all my fuel is on a Credit Card. Union Credit Card.

* * *

Q. And the fuel and the expenses you incurred going down for the dynamite, and coming back, were charged to Local 385?

A. Yes, sir.

* * *

Q. Did you turn in any specific records or travel receipts, other than the Turnpike receipt, concerning this trip?

A. That trip?

Q. Yes, sir.

A. Not that I recall. Not that I recall other than just the Turnpike receipt and if I did pay for the food, it would have been normal procedure for me to have turned in a receipt for the food consumed at the restaurant.

Q. And what would you put on such a receipt to justify it?

A. I could have put—I am sure I would have been evasive in it. There's no telling what I put on it, but it wouldn't have been to go get dynamite. I would possibly have said to pick up Contracts, or just on the Turnpike ticket, "Miami."

* * *

- Q. When did you learn Mr. Bullard had come back from South Carolina with the dynamite?
- A. He came to the Union office and told me that he was back, and I have him \$200 that it was agreed for him to go.
- * * *
- Q. Did you ever seek to get back that \$200?
- A. Yes, sir.
- Q. How did you do that?
- A. I made a phony bill for a meeting. Normally it would be coffee, doughnuts and whatnot. I think I put on the bill one hundred people in Gainesville, Florida.
- Q. This was a bill you submitted as if it were expenses you had incurred.
- A. Yes, but I made that bill out for \$208.
- Q. And you did then draw that \$208 from the Local 395 Treasury?
- A. A check was issued to me for that, yes, sir.
- Q. And that was considered to be what? Expense money and expense payment money to you?
- A. Money that I had spent at this meeting.
- Q. Now, when you paid Bullard the \$200, did you get the dynamite at that time?

APPENDIX D

In further support of Appellant's claim of double jeopardy, counsel presented to the trial court excerpts from the Government's closing argument in *U.S.A. V. Parker*, 76-62-Orl-Y. The pertinent statements made by the prosecutor as they relate to the charges presently pending against Appellant are as follows:

"Also talked about delivering a bomb to Duvall, and also talked about being in jail, hearing a threat from Parker about Witt, how he had been promised by Parker to get out of jail as long as he remained loyal to Mr. Parker."

* * *

"It is my routine to say no violence,' and it was routine to say no violence. He preached it every chance he had in front of a crowd just like he told Bullard never talk to me in front of anybody else about bombings.

"We are dealing here with a conspiracy in which the head man has taken all steps possible to insulate himself from any direct exposure.

"In effect he is acting like the conductor of an orchestra. He has conducted, he has orchestrated, he has commanded, induced, procured others to do these bombings for him and he at all times attempted to do so in a secretive manner."

* * *

"Bullard said that he was told that, 'As long as you remain loyal to me you will be all right.' That is what Parker told him, promised to get him out of jail if 'You remain loyal to me.'

"He has not only conducted and orchestrated the bombings themselves but he has conducted and orchestrated the defense of Witt and Bullard — attempts to cover up his conduct, attempts to insulate himself at every turn."

* * *

"Orchestrating his defense just as he orchestrated the bombings. At all steps trying to insulate himself from the actual events, putting as much distance as he can between himself and chances of getting caught."

* * *

"There there was rebuttal, and what was put on on rebuttal? Mr. Leroy Love, Curtis Leroy Love, testified that when he was arrested, as soon as he got out of jail and was at the union hall, then, Parker told him to keep his mouth shut, and shortly before his trial or during the trial he met with Parker and Parker then told him to keep his mouth shut and his bowels open.

"Then Mrs. Love testified how shortly after her husband was arrested she got \$25 a week and it started going up after that, going up from \$25 a week finally I think to \$115 a week after a period of time.

"That she was on welfare and she told Mr. Parker she was on welfare but the payments continued, and they continued until she appeared before the Grand Jury and was granted immunity and that is when they continued to."

* * *

"His reliance on the bombings, his attempts to orchestrate this event and to cover himself from being detected started from the very beginning when he told Charles Bullard, 'Don't talk to me about this in front of anybody else.'"